764

SUPREME COURT OF THE UNITED STATES.

No. 66.

ABRAHAM A. MASSIAS, (U. S.) APPELLANT,

VERSUS

THOMAS BACKHOUSE.

APPEAL FROM THE COURT OF APPEALS FOR THE TERRITORY OF FLORIDA.

INDEX.

	Original.	Print.
Writ of error to superior court of the eastern district	1	2
" certiorari	2	2
Record of do. do. do.	3	4
Declaration or petition of Thos. Backhouse	4	4
Defendant's plea	5	5
Amended declaration	7	5
Pleas of defendant	7	7
Demurrer and replication	12	8
Joinder in demurrer	13	8
Demurrer sustained	14	8
Verdict for plaintiff	14	9
Motion in arrest of judgment	15	9
Reasons therefor	16	9
Motion overruled	16	10
Judgment of superior court	16	10
Defendant's bill of exceptions	17	10
Certificate of clerk of superior court	23	13
Assignment of errors in the court of appeals	24	13
Joinder in error	25	14
Do. withdrawn, and motion to dismiss, &c.	26	15
Motion overruled	26	15
Judgment of court of appeals	27	15
Appeal prayed and allowed, bond	27	15
Clerk's certificate	29	16

Pleas at the city of Tallahassee, before the court of appeals for the Territory of Florida, on Monday, the 11th day of January, in the year of our Lord one thousand eight hundred and thirty.

Be it remembered that heretofore, to wit, on the 25th day of September, A. D. 1828, was sued out of the said court of appeals a writ of error, which is in the following words and figures, to wit:

In the name and by the authority of the Territory of Florida, to the judge of the superior court of the eastern district of Florida, greeting:

Whereas in the record and proceedings, and also in the rendition of the judgment in our said court given, on the 22d day of November, A. D. 1827, against Abraham A. Massias, in an action of trespass for one thousand dollars in favor of Thomas Backhouse, manifest error had happened to the great damage of the said Abraham A. Massias, as by his complaint we have understood; we being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the said Abraham A. Massias in this behalf, command you that the record and proceedings aforesaid, with all things touching the same, you, under your hand and seal, distinctly and plainly, send to the judges of our court of appeals, at the city of Tallahassee, on the first day of our January term next, so that our said judges, the record and proceedings aforesaid being inspected, may farther cause to be done therein, what of right and according to law ought to be done.

And have there this writ. Witness Joseph L. Smith, president of our said court of appeals, this 25th day of September, A. D. 1828, in the 53d year of American independence.

C. NICHOLAS, *Clerk*,
By Jas. S. Linn, D. C.

Endorsed.

Joseph L. Smith, Esq., one of the judges of the court of appeals of the Territory of Florida, directs that the within writ of error operate as a supercedeas to the judgment within mentioned of Thomas Backhouse against Abraham A. Massias.

C. NICHOLAS, *Clerk*,
By Jas. S. Linn, D. C.

Agreeably to which writ, the record and proceedings therein directed to be sent up were brought and filed in the said court of appeals, on Monday, the 5th day of January, in the year 1829, being the first day of the term.

And at another day, to wit, at a court of appeals held for the Territory of Florida, at the city of Tallahassee, on Wednesday, the 7th day of January, 1829, on motion of the plaintiff's attorney, who alleges diminution in the record sent hither, a writ of certiorari is awarded to be directed to the clerk of the superior court of the eastern district St. John's county, to certify the record more fully to this court, returnable here on the first day of the next term.

And on the 14th day of January, 1829, was sued out of said court a writ of certiorari, which is in the following words and figures, viz:

In the name and by the authority of the Territory of Florida, to the clerk of the superior court for the eastern district St. John's county, greeting:

Whereas in the record and proceedings in a certain action of trespass on the case, between Thomas Backhouse and Abraham A. Massias, lately sent by the judges of our court of appeals, by reason of our writ of error to the judgment rendered therein, diminution is suggested; therefore, you are hereby commanded that, under your hand and seal of office, the record and proceedings aforesaid you more fully to the judges of our said court of ap-

765.

peals, at the city of Tallahassee, on or before the first day of the next term, do send and certify enclosed, returning also this writ.

Witness Joseph L. Smith, presiding judge of our said court, this 14th day of January, A. D. 1829, in the 53d year of American independence.

C. NICHOLAS, *Clerk*,
By Jas. S. Linn, D. C.

Agreeably to which writ, the said record and proceedings were fully certified to this court, and filed in the same, on the 13th day of June, 1829, and are as follows:

Record.—Superior court eastern district of Florida.

Be it remembered that heretofore, to wit, on the fourth day of September, in the year of our Lord one thousand eight hundred and twenty three, Thomas Backhouse, by his attorneys, John Rodman and John Drysdale, brought and transferred from the office of the clerk of the county court of the county of St. John's, heretofore established under the authority of Andrew Jackson, late governor of this territory, his declaration or petition against Abraham A. Massias, and filed the same according to law, in the office of the clerk of said superior court, which said petition or memorial is in the words and figures following, to wit:

COUNTY OF ST. JOHN'S, EAST FLORIDA.

To the Honorable the justices of the county court of the county of St. John's:

The petition of Thomas Blackhouse respectfully sheweth, that Alfred A. Massias, on the first day of August, in the year one thousand eight hundred and twelve, at Fernandina, in Amelia island, and in the county of St. John's aforesaid, and within the jurisdiction of this honorable court, with force and arms, made an assault upon your petitioner, and him then and there beat, wounded, ill treated, and imprisoned, and then and there detained your petitioner in prison for the space of fifteen days, to wit, from the first day of August to the sixteenth day of said month, in the year aforesaid, against the will of your petitioner and the law of the land, and other enormities to your petitioner he, the said Alfred A. Massias, then and there did, to the damage of your petitioner of five thousand dollars.

And your petitioner further sheweth, that the said Alfred A. Massias, on the day and year aforesaid, at Fernandina, in Amelia island, in the county of St. John's aforesaid, with force and arms, made an assault upon your petitioner, and him then and there beat, wounded, and ill treated and imprisoned, and put in irons in a filthy guard-house, among divers negroes, and then and there detained your petitioner in prison for the space of fifteen days, to wit, from the first day of August to the sixteenth day of said month, in the year aforesaid, against the will of your petitioner and the law of the land, and other enormities to your petitioner he, the said Alfred A. Massias, then and there did, to the damage of your petitioner of five thousand dollars.

Wherefore your petitioner prays that citation may issue, requiring the said Alfred A. Massias to be and appear at the county court of the county of St. John's, to be holden at St. Augustine, in and for said county, on the second Monday in June next, then and there to answer the complaint of your petitioner in an action of assault and battery and false imprisonment,

and to make such amends in damages to your petitioner as this honorable court shall order and adjudge.

Dated the 27th March, 1822.

J. RODMAN,
Attorney for petitioner.
JOHN DRYSDALE,
Attorney for petitioner.

Sheriff's return.

Citation served; copy of petition left with defendant.

JAMES R. HANNA,
Sheriff St. John's County.

And afterwards, to wit, on the seventeenth day of April, in the year of our Lord one thousand eight hundred and twenty-four, the said defendant, by Isaac N. Cox, his attorney, brought and filed in the clerk's office last aforesaid, his plea to the said declaration or petition, which is in the words and figures following, to wit:

TERRITORY OF FLORIDA, SUPERIOR COURT.—*District of East Florida, St. John's county, sct.*

ABRAHAM A. MASSIAS, sued by the name of ALFRED A. MASSIAS, *ads.* THOMAS BACKHOUSE. } *Trespass.*

And Abraham A. Massias, against whom the said Thomas Backhouse hath exhibited his said bill or declaration by the name of Alfred A. Massias, in his own proper person, comes and says, that he is named and called by the name Abraham A. Massias, and by that name and surname hath always, since the time of his nativity, been named and called without this last, he, the said Abraham A. Massias, now is, at the time of exhibiting the said bill or declaration was, or ever before had been, named or called by the name of Alfred A. Massias, as by the said bill or declaration is supposed; and this he, the said Abraham A. Massias, is ready to verify. Wherefore he prays judgment of said declaration, and that the same may be quashed, &c.

ABRAHAM A. MASSIAS.

Isaac N. Cox being duly sworn, doth depose and say, that he verily believes the above plea to be true, both in substance and fact.

ISAAC N. COX.

Sworn and subscribed before me, this 17th day of April, 1824.

BERNARDO SEQUI,
Justice of the peace.

And afterwards, to wit, before the superior court for the eastern district of Florida, holden at the court-house in the city of St. Augustine, at the term of May, in the year of our Lord one thousand eight hundred and twenty four, to which term this cause had come by regular continuances, to wit, on Saturday, the eighteenth day of said term, and the twenty-second day of said month, the following entry was made, to wit:

THOMAS BACKHOUSE, plaintiff, *against* ALFRED A. MASSIAS, defendant.

This day came the parties, by their attorneys, and, on motion of the plaintiff, leave is given him to file affidavit of notice of the transfer of this cause

766.

to this court; and it is further adduced that the plea filed herein be sustained.

And afterwards, to wit, before the superior court for the eastern district of Florida, holden at the court-house in the city of St. Augustine, at the term of May, in the year of our Lord one thousand eight hundred and twenty four, to which term this cause had come by regular continuances, to wit, on Saturday, the twenty-fourth day of said term, and the twenty-ninth day of said month, the following entry was made, to wit:

THOMAS BACKHOUSE, plaintiff, *against* ALFRED A. MASSIAS, defendant.

On motion of the plaintiff, by his attorney, leave is given him to amend his delaration herein.

And afterwards, to wit, on the 7th day of July, in the year of our Lord one thousand eight hundred and twenty-four, the said plaintiff, by John Rodman, his attorney, brought and filed in the clerk's office aforesaid, his amendment to the said declaration, which is in the words and figures, to wit:

Superior Court.

THOMAS BACKHOUSE, *vs.* ALFRED A. MASSIAS.

By leave of the court, the declaration in this cause is amended, and the name of *Abraham* is substituted for that of *Alfred*, so that this action is against Abraham A. Massias instead of Alfred A. Massias.

JOHN RODMAN, *att'y for plff.*

And afterwards, to wit, at the term of November, in the year of our Lord one thousand eight hundred and twenty-six, the said defendant, by his attorneys, brought and filed in the superior court for the eastern of Florida, his pleas to the said declaration, to wit, on Thursday, the fourth day of said month; which said plea are in the words and figures following, to wit:

Superior Court for the district of East Florida.

ABRAHAM A. MASSIAS, *vs.* THOMAS BACKHOUSE. } *Trespass vi et armies.*

1. And the said Abraham A. Massias comes and defend the injury when, &c., and says he is not guilty of the said supposed assault, battery, and imprisonment, in manner and form as the said plaintiff hath declared and complained against him, and of this he puts himself on his country, &c.; and the plaintiff doth the like.

2. And for further plea in this behalf, as to the supposed trespass, assault, &c., in the said declaration mentioned, the Massias, by leave of the court here, for this purpose first had and obtained, saith, that the said Thomas Backhouse ought not to have and maintain his aforesaid action against him, the said Massias, because he is not guilty of the said supposed trespass in the said declaration mentioned, in manner and form as the said plaintiff hath complained against him, at any time within the period prescribed by the laws of the kingdom of Spain for the prosecution of such supposed trespass, next before the surrender of the province of East Florida to the United States of America; and this he is ready to verify. Wherefore he prays judgment, &c.

3. And for further plea in this behalf, as to said trespass in said declaration mentioned, the said defendant saith, that the plaintiff aforesaid ought not to have and maintain his aforesaid action against him, the defendant, because he, the said defendant, was not guilty of the said trespass, assault, &c., in manner and form as the plaintiff hath alleged and complained against him, at any time within three years next before the commencement of said writ; and this he is ready to verify. Wherefore he prays judgment whether, &c.

4. And the said defendant, for further plea in this behalf, saith, that before the commission of the supposed trespass in the declaration mentioned, to wit, on the day of , in the year of our Lord 1811, an act of Congress was passed and became a law of the United States, authorizing the President of said United States, on certain contingencies and conditions therein mentioned, to take possession of the province of East Florida, at that time one of the dependencies and belonging to the dominions of the King of Spain; and that in pursuance of said law, the said defendant, a commissioned officer in the army of the United States of America, was directed and commanded by the proper authority, whom he was bound and compelled to respect and obey, to take possession of Amelia island, on which said island Fernandina, the place or town in the declaration mentioned, is situated, and forms a part thereof; and that the said defendant, by his orders aforesaid, was invested with authority and command to govern the same, and that the said trespass, by the plaintiff alleged, was necessary and unavoidable for the maintenance of said authority and the preservation of order over the territory entrusted to his command and submitted to his discretion; and that if any injury was done to the plaintiff, as alleged, the defendant is in no wise answerable in law to the plaintiff, but to the Government of the United States, whose officer he was, and whose orders aforesaid he was bound to obey; but that the plaintiff, being a subject of the King of Spain, should seek redress of his master, and through him of the United States; and this he is ready to verify. Wherefore he prays judgment, &c.

5. And the said defendant, for further plea, saith, that the said plaintiff ought not to have and maintain his action against him, the defendant, because the said Thomas Backhouse, at the time specified in the declaration of the trespass alleged, to wit, on the day of , 1812, was a subject of the King of Spain, and resident of Fenandina, which place had been taken possession of by the troops of the United States, acting under the orders of the President, and that martial law had been established and proclaimed over the same, then being under the flag of the United States by the officer in command; and that the said plaintiff being, as aforesaid, a subject of the King of Spain, and being moreover a riotous and disorderly person, was ordered into custody by the then existing authorities of the place, and imprisoned in the guard-house, the only prison at Fernandina; and this defendant further alleges that, if there was any beating or assault, as alleged, it was necessary and justifiable to execute the order aforesaid, emanating from the constituted authorities of the place, and to preserve the peace, order, and government of the same which he is ready to verify. And therefore he prays judgment, &c.

6. And the said defendant, for further plea, saith, that said Backhouse ought not to have his action against the defendant, because the said Backhouse was, at the time of the supposed trespass in the declaration alleged,

a subject of the King of Spain, living under the dominion of the same, and that the defendant is now, and was then, a citizen of the United States, and a commissioned officer in the army of the United States; and that a treaty was made on the 22d day of February, 1819, between the said United States and the King of Spain, and subsequently ratified by both Governments, in which said treaty it is declared and stipulated, the King of Spain hath, for himself and his subjects, utterly relinquished and renounced all claim for indemnity for any injuries by any of the said officers of the United States heretofore done or committed to or against any of the subjects of him, the said King and the said defendant, and that the said supposed trespasses in the plaintiff declaration mentioned, were done and committed by him while acting as such commissioned officer, and in the lawful discharge of his duty as such, previous to the time when the said treaty was made and ratified as aforesaid; and this he is ready to prove. Wherefore he prays judgment, &c., &c.

7. And the said defendant, for further plea, says, that the plaintiff ought not to have his action aforesaid, because at the time alleged Fernandina had been conquered and forcibly possessed by the troops of the United States, under the command of the defendant, and that the defendant, by the conquest aforesaid, was invested by the national law with the authority and power of the Spanish governor, which governor aforesaid was amenable to his sovereign alone for an act or trespass done to a subject as aforesaid; and that the said trespass, if any, was in this way done and committed; which he is ready to verify.

DOUGLASS, MURRAY, & WHITE.

And afterwards, to wit, at the term of November, in the year of our Lord one thousand eight hundred and twenty-six, the said plaintiff, by his attorneys, brought and filed in the superior court for the eastern district of Florida, his demurrer and replication to the said pleas, to wit, on Friday, the fifth day of November, of the said court, and the tenth day of said month, which said demurrer and replication are in the words and figures following, to wit:

Superior Court.

THOMAS BACKHOUSE, *vs.* ABRAHAM A. MASSIAS.

And the said plaintiff, as to the said pleas of the said defendant, *secondly*, *thirdly*, and *sixthly*, above pleaded, saith, that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against him, the said defendant; and that he, the said plaintiff, is not bound by the law of the land to answer the same; and this he, the said plaintiff, is ready to verify. Wherefore, for want of sufficient pleas in this behalf, he, the said plaintiff, prays judgment and his damages by him sustained, on occasion of the committing of the said trespass, to be adjudged to him, &c.

And as to the pleas of the said defendant, *fourthly*, *fifthly*, and *seventhly*, above pleaded, as to the said several trespasses in the said plaintiff's declaration above mentioned, and in those pleas attempted to be exercised and justified, he, the said plaintiff, saith, that by reason of any thing by the said defendant in these pleas alleged, he, the said plaintiff, ought not to be barred

from having and maintaining his aforesaid action thereof against him, the said defendant, because he saith that the said defendant, at the said time, when, &c., of his own wrong, and without the causes by him, in his said *fourth, fifth, and seventh* pleas alleged, committed the said several trespasses in manner and form as he, the said plaintiff, hath above in his said declaration complained against him the said defendant; and this he, the said plaintiff, prays may be inquired of by the country; and the said defendant doth the like, &c.

J. RODMAN, *att'y for plff.*

Dated the 10th Nov. 1826.

And afterwards, to wit, at the term of November, in the year of our Lord one thousand eight hundred and twenty-six, the said defendant, by his attorneys, brought and filed in the superior court for the eastern district of Florida, his joinder in demurrer, to wit, on Saturday, the sixth day of the November term of the said court, and the eleventh day of said month, which joinder in demurrer is in the words and figures following, to wit:

MASSIAS, *ads.* BACKHOUSE. } *Joinder in demurrer.*

And the said A. A. Massias saith, that his said pleas by him secondly, thirdly, and sixthly pleaded, and the matter therein contained in manner and form as the same are above pleaded, are sufficient in law to bar and preclude the said plaintiff from having and maintaining his aforesaid action thereof against him, the said defendant; and this he is ready to verify, when, where, and in such manner as the court shall direct. Wherefore, inasmuch as the said plaintiff hath not answered said pleas, nor in manner denied the same, the said defendant prays judgment, and that the plaintiff be barred from having said action against him, said defendant.

WHITE, &c., *for defendant.*

And afterwards, to wit, before the superior court for the eastern district of Florida, holden at the court-house in the city of St. Augustine, at the term of November, one thousand eight hundred and twenty-seven, *to which term of November, one thousand eight hundred and seven*, to which term this cause had come by regular continuances, to wit, on Wednesday, the fourteenth day of said term, and the twenty-first day of said month, the following entry was made, to wit:

THOMAS BACKHOUSE, *vs.* ABRAHAM A. MASSIAS.

The demurrer of the plaintiff to the second, third, and sixth pleas, heretofore at this term filed and argued in this cause, is sustained, and the said pleas are ordered and adjudged to be insufficient.

And afterwards, to wit, before the superior court for the eastern district of Florida, holden at the court-house in the city of St. Augustine, at the term of November, one thousand eight hundred and twenty-seven, to which term this cause had come by regular continuances, to wit, on Thursday, the fifteenth day of said term, and the twenty-second day of said month, the following verdict was entered, to wit:

THOMAS BACKHOUSE,
against
ABRAHAM A. MASSIAS. } *In trespass.*

768.

This day came the parties, by their attorneys, and thereupon came a jury, to wit, Christopher C. Minchen, Joseph Pissoon, Samuel Y. Garey, John M. Fontane, John Andreo, George Gianople, Henry Groves, Domingo Cucopoly, Joseph Lambias, Andrio Pappy, Reuben Loring, and Joseph Hernandez, who being duly sworn well and truly to try the issues joined between the parties, upon their oaths do say, that the said defendant is guilty in manner and form as the said plaintiff in his declaration against him hath alleged, and so find for the said plaintiff the sum of one thousand dollars, the damages he hath sustained in the premises.

And afterwards, to wit, before the superior court for eastern district of Florida, holden at the court-house in the city of St. Augustine, at the term of November, one thousand eight hundred and twenty-seven, to which term this cause had come by regular continuances, to wit, on Friday, the sixteenth day of said term and the twenth-third day of said month, the following motion was entered, to wit:

THOMAS BACKHOUSE,
against
ABRAHAM A. MASSIAS. } *In trespass.*

This day came the parties, by their attorneys. Whereupon the defendant made his motion in arrest of judgment and for a new trial.

And afterwards, at the term of November, in the year of our Lord one thousand eight hundred and twenty-seven, the said defendant, by his attorneys, brought and filed in the superior court for the eastern district of Florida, his reasons in arrest of judgment, to wit, on Thursday, the twenty-first day of the November term of the said court and the twenty-ninth day of said month, which said reasons are in the words and figures following, to wit:

ABRAHAM A. MASSIAS,
ads.
THOMAS BACKHOUSE. } *Trespass.*

Now on this day came the said defendant, by his counsel, and filed the following reasons in arrest of judgment, viz:

The defendant protesting that this suit was not commenced in said county court, in the year 1822, says, that, if it was commenced in said court in said year, the proceeding was conne non judici, for that the said court acted without any legal or other authority whatever.

The said defendant still protesting, says, that if said cause was pending in said court, the said court was, during its pendancy, abolished, and there was and is no law authorizing its removal into this court.

WHITE & DRYSDALE,
Attorneys for defendant.

And afterwards, to wit, before the superior court for the eastern district of Florida, holden at the court-house in the city of Augustine, at the term of November, one thousand eight hundred and twenty-seven, to which term this cause had come by regular continuances, to wit, on Monday, the twenty-second day of said term and the seventeenth day of December, the following orders were entered, to wit:

THOMAS BACKHOUSE, plaintiff,
against
ABRAHAM A. MASSIAS, defendant. } *In trespass.*

The motion of the defendant in this case for a new trial, and in arrest of judgment, is not sustained. Whereupon, on motion of the plaintiff's counsel, it is ordered that judgment be entered up in this case on the verdict of the jury rendered herein, on the 22d day of November last. It is therefore considered by the court, that the said plaintiff do recover of the said defendant the said sum of one thousand dollars, the damages he hath sustained in the premises, together with seventeen dollars and sixty-five cents, his costs by him about his suit in this behalf expended.

And afterwards, to wit, on the fourth day of August, in the year of our Lord one thousand eight hundred and twenty-eight, the said defendant, by Thomas Drysdale, his attorney, brought and filed, nunc pro tunc, in the clerk's office aforesaid, his bill of exceptions, which is in the words and figures following, to wit:

ABRAHAM A. MASSIAS,
ads.
THOMAS BACKHOUSE. } *Trespass.*

Be it remembered that, on the trial of this cause, the defendant, by his counsel, offered to read as evidence to the jury, from the 49th page of the ninth volume of the American State Papers, a letter from the Secretary of State for the United States to D. B. Mitchell, Governor of the State of Georgia, which is in words and figures as follows, to wit:

The Secretary of State to D. B. Mitchell, Esq., Governor of Georgia.

DEPARTMENT OF STATE, *May* 27, 1812.

SIR: I have had the honor to receive your letter of 2d inst. from St. Mary's, where you had arrived in discharge of the trust reposed in you by the President, in relation to East Florida. My letter by Mr. Isaacs has, I presume, substantially answered the most important of the querries submitted in your letter, but I will give to each a more distinct answer. By the law, of which a copy was forwarded to you, it is made the duty of the President to prevent the occupation of East Florida by any foreign power. It follows that you are authorized to consider the entrance, or attempt to enter, especially under existing circumstances, of British troops of any description as the case contemplated by the law, and to use the proper means to defeat it. An instruction will be immediately forwarded to the commander of the naval force of the United States, in the neighborhood of East Florida, to give you any assistance in case of emergency which you may think necessary and require. It is not expected, if you find it proper to withdraw the troops, that you should interfere to compel the patriots to surrender the country, or any part of it, to the Spanish authorities. The United States are responsible for their own conduct only, not for that of the inhabitants of East Florida; indeed, in consequence of the compromitment of the United States to the inhabitants, you have been already instructed not to withdraw the troops, unless you find that it may be done consistently with their safety, and to report to the Government the result of your conferences with the Spanish authorities, with your opinion of their views, holding in the mean time the ground occupied. In the present state of our

709.

affairs with Great Britain, the course above pointed out is the more justifiable and proper.

I have the honor, &c.
JAMES MONROE.

The defendant, by his counsel, also offered at the same time to read in evidence to the jury the certificate of the Secretary of State for the United States, an extract from the records of the Department of State, thereunto attached; which certificate and record are in the following words and figures, to wit:

To all to whom these presents shall come, greeting:

I certify that the annexed writings have been compared with the record in this office, and that they are true copies thereof.

In testimony whereof, I, Henry Clay, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed. Done at the city of Washington, this third day of October, A. D. 1827, and of the independence of the United States the fifty-second.

H. CLAY. [SEAL.]

DEPARTMENT OF STATE, *October* 13, 1812.

His Excellency DAVID B. MITCHELL:

SIR: I have had the honor to receive your letter of the 19th ult. from Milledgeville, acknowledging the receipt of mine of the 6th of July, and communicating the state of our affairs with the Spanish authorities in East Florida at the time you left Savannah.

The President finds, with regret, that the Governor of East Florida has declined entering into any engagements with you, to secure from molestation or harm such of the inhabitants as had been encouraged by Governor Mathews, in a mistaken view of his powers, to engage in certain revolutionary measures there; and also that, at the time when a fair and just provision in their favor was under discussion, he had made an attack on the troops of the United States, under the command of Col. Smith, who had been necessarily advanced for the safety and protection of these people. It appears also that, that in the same spirit, the Governor of East Florida had excited the Indians to commit acts of hostility against the United States, and that there was serious cause to apprehend that, under his influence, the incursions of the Indian tribes against us would be increased, and the aggressions be proportionally more extensive and injurious. The conduct of the Governor of East Florida has excited much surprise, more especially when the liberal and friendly conduct of this Government towards Spain is taken into consideration. As soon as it was known that *General Mathews had transcended his powers*, the President revoked them and committed them to you, with authority to restore the Territory to the Governor of the province, on the condition that satisfactory assurance should be given you that the people who had acted at his instance, on the faith of the United States, should not be punished or molested for it. It was hoped and presumed that this condition would have been promptly acceded to, or rather that a just policy would have anticipated it. It was impossible to foresee that the frank and liberal proposal of the United States to restore the Territory to the Spanish authorities, after disavowing the conduct of their own officer and displacing him, whereby the authority of Spain would have been met by acts of direct and open hostility.

The wrongs heretofore received from Spain, with which you are well acquainted, independent of other considerations of sufficient weight in themselves, would have justified the United States in taking possession of that province as an indemnity to our citizens. These wrongs have been borne in the expectation that the motive could not be mistaken, and that the period was not remote when the Spanish authorities, by whomsoever wielded, reciprocating a similar sentiment towards the country, would make ample reparation for them. To abandon the people who had relied on the faith of the country, however improperly pledged, to the resentments of the Spanish authorities, which evidently awaited them, while the Government of Spain made no recompense to the United States for losses or atonements, for insults would have been equally unjust in itself and inconsistent with the sympathies due to their situations. To do it after the outrages more recently received, which you have communicated, without a satisfactory arrangement, would be still more reprehensible. On a full view of your conduct, in this important and delicate transaction, I am happy to communicate to you the entire approbation and the thanks of the President. In accepting the trust you gave a proof of patriotism, and the discharge of its duties has been distinguished by the abilities and judgment which the nature of the case required. That more precise instructions were not given you for the reinforcements of the troops under the command of Col. Smith, in case the Spanish authorities should refuse to give you the satisfactory assurance desired in favor of the people of East Florida, to whom the public faith had been pledged, proceeded from a hope and belief that contingencies would not happen, and a confidence, if it did, that your judgment, looking distinctly to the nature of your trust and its duties, would supply the omission.

The President is aware that your duties in the office of chief magistrate of Georgia, which will now become more active, will render it difficult, if not impossible, for you in future to execute those with which you have been charged in regard to East Florida. Willing to relieve you from the burthen, he proposes to transfer the powers lately committed to you to Major General Pinckney, with whose situation and functions they have a convenient relation. I have therefore to request, that you will have the goodness to communicate with him on that subject, and furnish him such information as may be useful to him.

I have the honor to be, &c. &c.

JAMES MONROE.

His Excellency DAVID B. MITCHELL, &c. &c. &c.

The defendant, by his counsel, also at the same time, offered to read as evidence to the jury a letter purporting to be from Col. Thomas A. Smith to Capt. A. A. Massias, and a deposition of Joseph Woodruff, hitherto annexed, which as follows, to wit:

CAMP BEFORE ST. AUGUSTINE, *6th July*, 1812.

SIR: You will proceed with a non commissioned officer and nine privates of your company to Amelia island, and relieve Capt. Ridgeway in the command; he is to proceed to this place agreeably to the tenor of the order herewith, which you will deliver to him; you will be governed in all respects by such orders as his excellency Governor Mitchell has given Capt. Ridgeway and Williams, and such others as he may give you; you will examine the seventeen boxes fixed ammunition stored in St. Mary's, and re-

770.

tain four, two of round and two of canister, the others to be shipped to Thomas Bourke, Esq., U. S. agent, Savannah.

I am, Sir, with high respect,
Your obedient servant,
T. A. SMITH,
Lieutenant Col. commanding.

ABRAHAM A. MASSIAS, *ads.* THOMAS BACKHOUSE.

The evidence of Joseph Woodruff, taken in behalf of the defendant, and to be read in evidence on the trial of this cause by consent of the parties:

Personally appeared before Elias B. Gould, a justice of the peace for the county of St. John, Joseph Woodruff, who being duly sworn, says, that he is well acquainted with the signature of Thomas A. Smith, late Lieut. Col. commanding the United States troops in Florida; that the letter now shewn him, dated "Camp before St. Augustine, 6th July, 1812, and marked A. E. B. G.," is signed by the said Thomas A. Smith, in his own proper handwriting, to the best of his knowledge and belief; that he knows his handwriting, and has often seen him write; and further saith not.

JOSEPH WOODRUFF.

(Endorsed.) Sworn to before me, the 12th day of November, 1827.
ELIAS B. GOULD, *Jus. Peace.*

That in respect to the above letter, purporting to be from Thomas A. Smith, Lieutenant Colonel commanding, no evidence was offered to the court to prove that it was written at the time it bears date, or previously to the cause of action alledged by the plaintiff, or that it was ever in the hands of the defendant. To the reading of which several documents the plaintiff, by his counsel, objected; and his objection was sustained by the court. To which decision and opinion of the court the said defendant, by his counsel, excepts, and prays that this, his bill of exception, may be signed, sealed, and made a part of the record in this case.

Given under my hand and the seal of the court, at the November term thereof, A. D. 1828.

JOSEPH L. SMITH.

SUPERIOR COURT, EASTERN DISTRICT OF FLORIDA, to wit.

I, George Gibbs, clerk of the superior court for the district aforesaid, do hereby certify that the foregoing twenty-four pages and three quarters contain a full, true, and complete transcript of the record and proceedings had in the case therein named.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this 18th day of May, A. D. 1829, and of the independence of the United States of America the fifty-third.

GEORGE GIBBS, *Clerk.*
K. B. GIBBS, *Dep. Clerk.*

TERRITORY OF FLORIDA.—*Court of Appeals.*

ABRAHAM A. MASSIAS, *vs.* THOMAS BACKHOUSE. } *In error.*

Upon the application of the plaintiff in error, and on an inspection of the foregoing records, in the case of Thomas Backhouse, *vs.* Abraham A. Mas-

sias, it is, this 11th day of August, 1828, ordered by me, the presiding judge of the court of appeals of the Territory of Florida, that a writ of error issue in the case; and the said plaintiff in error having filed his bond, with approved security, in the office of the clerk of the court for the district of East Florida, conditional, as the law in such cases directs, it is further ordered that the said writ do operate as a supercedeas, and that the clerk of said court of appeals endorse on said writ that shall so operate.

JOSEPH L. SMITH.

TERRITORY OF FLORIDA.—*Court of Appeals.*

ABRAHAM A. MASSIAS,
vs.
THOMAS BACKHOUSE. } *In error.*

And the said plaintiff in error, by his counsel, comes and alleges to the court now here that there is error in the foregoing record in this, to wit:

First. The declaration is bad.

Second. No issue was made upon the plea in abatement of said Massias, nor was there any trial thereon.

Third. The court erred in sustaining the demurrer as to the defendants second, third, and sixth pleas.

Fourth. The court erred in sustaining the objection of the plaintiff's counsel to the evidence offered by the defendant, as in the defendant's bill of exceptions is mentioned.

Fifth. There is a material variation between the declaration and the verdict of the jury.

Sixth. The court erred in sustaining jurisdiction of the case.

Seventh. The court erred in not arresting the judgment for the causes assigned.

Eighth. Judgment was for the plaintiff when it should have been for the defendant.

For these and divers other causes, the plaintiff in error prays that said judgment may be reversed, and that his reasonable costs and charges may be awarded him.

DOUGLASS, *att'y for pl'ff in error.*

And at another day, to wit, on the 5th day of January, in the year 1830, came the defendant in error, and filed the following joinder in error:

Court of Appeals.

THOMAS BACKHOUSE, *ads.* ABRAHAM A. MASSIAS.

And hereupon afterwards, to wit, on the day of January, in January term, in the year one thousand eight hundred and thirty, the said Thomas Backhouse, by John Rodman, his attorney, freely comes here into court, and says that there is no error either in the record or proceedings aforesaid, or in giving the judgment aforesaid; and he prays that the said court of appeals, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid, above assigned for error, and that the judgment aforesaid, in form given, may be in all things affirmed, &c.

J. RODMAN,
Attorney for defendant in error.

771.

And at another day, to wit, at a court of appeals for the Territory of Florida, held on Wednesday, the 6th day of January, in the year last aforesaid, came the parties, by their attorneys, and thereupon, on motion, leave is given the defendant to withdraw his joinder in error filed in the cause. Whereupon the said defendant, by his attorney, moved the court to dismiss this suit on the ground that it is not properly before this court, because the original writ of error in this cause was never served upon the clerk or the court below, and because the certiorari, ordered at the last term of this court, was issued without any record or return of proceedings of the court below being here, (except the certified copy filed on the 4th September, 1828, by the plaintiff in error, before the issuing said writ of error,) upon which said certiorari could be predicated, and because the certified copy of the proceedings plead by the plaintiff in error, on the 13th June, 1829, does not appear to be a return of the superior court of the eastern district to any writ of error issued from this court, or to the said writs of certiorari, which motion being fully considered, it is ordered that the same be overruled. And the cause was thereupon partly heard upon the transcript of the record of the judgment aforesaid and the argument of counsel, and is continued until to-morrow for a further hearing thereof.

And at another day, to wit, at the same court continued and held on Thursday, the 7th day of January, in the year aforesaid, this cause was fully heard on the transcript of the record of the judgment aforesaid and the arguments of counsel, but because the court is not yet advised of its judgment to be given in the premises, time is taken to consider thereof.

And now at this day, to wit, the day and year first herein mentioned, to wit, at a court of appeals held for the Territory of Florida, at the city of Tallahassee, on Monday, the 11th day of January, 1830, came the parties, by their attorneys, and the court having maturely considered the transcript of the record of the judgment aforesaid and the arguments of counsel in this cause, is of opinion that there is no error in said judgment. It is therefore considered that the same be affirmed, and that the defendant recover of the plaintiff damages at the rate of six per centum per annum on the amount of the judgment below, for retarding the execution of said judgment, and one dollar and fifty cents his costs by him about his defence in this behalf expended; which judgment is ordered to be certified to the court below, to be there put into execution.

And afterwards, to wit, in vacation, on Tuesday, the 2d day of November, in the year 1830, before the Honorable Thomas Randall, one of the judges of the said court of appeals, the plaintiff in error prayed an appeal from the judgment rendered herein at the last term of said court of appeals to the Supreme Court of the United States, which is granted him on his entering into bond, with such security as shall be approved by the clerk, in the penalty of two hundred dollars, conditioned as the law directs.

And on the 29th December, 1830, the following appeal bond was filed by the said plaintiff, viz:

Know all men by these presents, that we, Abraham A. Massias and Barnard E. Bee, are held and firmly bound unto Thomas Backhouse in the just and full sum of four hundred dollars, to be paid to the said Thomas Backhouse, his certain attorney, his executors, administrators, or assigns; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by